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SB 180: Residential Service Agencies – Reimbursement – Personal Assistance Services

Hearing of the Senate Finance Committee, February 9, 2023

Position: Favorable

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work. The PJC **supports SB 180**, which would ensure that home care workers who provide care under certain Medicaid programs are properly classified as employees and not misclassified as independent contractors.

Problem: Many of the personal care aides who provide in-home care under Medicaid programs are misclassified as independent contractors, denying them access to the social safety net and reducing job quality when Maryland faces a shortage of these important workers.

- Between 20,000 and 30,000 personal care aides work under Medicaid programs operated by the Maryland Department of Health's Office of Long Term Services and Supports,¹ which this bill concerns.
- Despite enforcement by the U.S. Department of Labor and a clear [guidance document](#) produced by the Office of the Attorney General,² many home care agencies (called "residential service agencies" – RSAs – by Maryland's Health Code) that employ personal care aides under these programs wrongly call the workers independent contractors. The widespread misclassification of these workers hurts everyone:
 - *It hurts workers* by worsening job quality, cutting them out of the social safety net (making it harder for them to get benefits like sick days and workers' compensation) and imposing on them a higher "self-employment" tax burden when they should be getting a tax refund.
 - *It hurts consumers* by disincentivizing RSAs from providing training to their workers, by shrinking the size of the workforce so many Marylanders depend on, and by increasing worker turnover, which – given the intimate nature of the work – can be traumatizing.
 - *It hurts law-abiding RSAs* that face unfair competition from other RSAs that choose to save money by shirking their obligations as workers' employers.
 - *It hurts the State of Maryland* by depriving it of employment tax revenue for things like the unemployment insurance trust fund – revenue Maryland and its workers depend on.

SB 180's Solution:

- SB 180 would fix the problem by providing that the Maryland Department of Health only reimburse RSAs for in-home personal care provided under certain Medicaid waiver programs if the aides who do the work are classified as employees. It is a simple solution to a problem that has long eluded one.

¹ These programs include the Home and Community-Based Options Waiver, Community First Choice, Community Personal Assistance Services, Increased Community Services, Program of All-Inclusive Care for the Elderly, Medical Day Care Services, and Model Waiver for Medically Fragile Children. SB 180 does not apply to any programs operated under the Developmental Disabilities Administration.

² This guidance resulted from the passage of 2021's SB 384, sponsored by then-Chair Delores Kelley.

- SB 180 does not assign a label to any employment relationship. Rather, it exercises Maryland's authority to decide what kinds of jobs public money should support. Maryland has long used this authority in other contexts, as shown by Maryland's Prevailing Wage Law (for public works contracts) and Living Wage Law (for certain state contracts for services). Maryland's home care workers are just as important as construction workers and also deserve the state's attention.
- Aside from Maryland's clear authority to decide what kinds of jobs it wants public dollars to support, the workers covered by this bill are employees under the law, not independent contractors: RSAs set their pay rates, enforce state rules and regulations, track their time, and often impose a variety of other controls over the terms and conditions of their work.
- SB 180 will level the playing field for law-abiding home care agencies, professionalize a marginalized workforce, improve quality of care, and ensure that public dollars are not used to violate the law.
- Last year's SB600 – codified at § 19-4A-11(c) of the Health code – already provides the Maryland Department of Health with the information it needs to ensure compliance with this year's SB 180.

Improving the quality of personal care jobs is a *race equity* issue and a *gender equity* issue.

- About 90% of Maryland's personal care aides are women and about 70% are Black.
- When these workers are misclassified as independent contractors, it hurts them, their families, and their communities.

For the foregoing reasons, the PJC **SUPPORTS SB 180** and urges a **FAVORABLE** report. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.